IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
	)	
DANIEL J. KAZANAS	**)**	**Supreme Court # SC 83033**
	)	
	)	
Respondent.	**)**	

INFORMANT'S BRIEF

MARIDEE F. EDWARDS #53481
CHIEF DISCIPLINARY COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ALAN D. PRATZEL #29141
SPECIAL REPRESENTATIVE
REGION XI DISCIPLINARY COMMITTEE
634 North Grand, Suite 10A
St. Louis, MO 63103
(314) 533-0196

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

STATEMENT OF JURISDICTION

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. (1994).

STATEMENT OF FACTS

1. Respondent's professional background

Respondent is a forty-one year old attorney who was licensed to practice law in the State of Missouri on September 17, 1983. **Stipulation, Paras. 1 and 2.**[1] By Order dated October 16, 2000, the Missouri Supreme Court suspended Respondent from the practice of law until further order of the Court.

Respondent started working in 1983 as an associate attorney at the law firm presently known as Klutho, Cody & Kilo, P.C. (the "KCK firm"). **Tr. I at 104; Stipulation Para. 3.** Respondent was offered shareholder status at the firm during 1994, but did not pay for his KCK stock until December 1995 at which time he became a

---

[1] The facts contained herein are drawn from the Stipulation of Facts, with exhibits, admitted into evidence as Master's Exhibit 1 as well as the testimony elicited and the exhibits admitted into evidence at the trial in this matter conducted on January 14 and 15, 2002. References to the Stipulation of Facts between the parties are denoted by "**Stipulation**" followed by the appropriate paragraph number. References to Stipulation exhibits are denoted by "**Stipulation Exhibit**" followed by the relevant exhibit number. References to the trial testimony on January 14, 2002 are denoted by "**Tr. I at __**" followed by the appropriate page reference. References to the trial testimony on January 15, 2002 are denoted by "**Tr. II at ___**" followed by the appropriate page reference. References to the trial exhibits are denoted by the name of the offering party followed by the appropriate exhibit number.

shareholder. **Tr. I at 122-123.** Respondent resigned from KCK on January 15, 1997. **Stipulation Para. 4.** At the time he left KCK, the firm repurchased Respondent's stock in KCK for the sum of $6,166.49. **Tr. I at 128; Stipulation Para. 4.**

2. <u>Background regarding the Klutho, Cody & Kilo law firm</u>

The KCK law firm was established in 1960 and has existed as a professional corporation since 1980. **Tr. I at 96.** During all relevant time periods involved herein, KCK was internally managed by a 3-person Executive Committee consisting of Vic Klutho, Edward Cody and John Kilo. **Tr. I at 96-97.** The Executive Committee managed all aspects of the firm, including decisions regarding hiring, termination, bonuses and the opportunity to become a shareholder. **Tr. I at 97.** No individual member of the Executive Committee had authority to act on behalf of KCK or to otherwise bind the law firm. **Tr. I at 97.** No shareholder track existed for associate attorneys at KCK; the Executive Committee offered shareholder status to associates as appropriate, based on the associate's work ethic, work quality and client base.[2] **Tr. I at 97-98.**

There was no individual ownership interest in clients at KCK. Thus, all clients were firm clients. **Tr. I at 98.** When a KCK attorney introduced a new client to the firm, that client became a firm client. Even though attorneys at KCK had individual

---

[2] Thus, John Kilo became a shareholder after three years at the firm. **Tr. I at 96.** Robert Trame became a shareholder after one years at the firm. **Tr. I at 227.** Respondent became a shareholder after more than ten years at the firm.

responsibilities with regard to clients (e.g., billing responsibility), the clients at all times belonged to the firm. **Tr. I at 98-99.** In that same regard, all attorneys' fees collected from KCK clients belonged to the firm and KCK maintained a proprietary interest in the work performed by KCK attorneys on behalf of the KCK clients. **Tr. I at 99-100.**

No attorney at KCK ever received a pre-determined share or percentage of attorney's fees collected from firm clients, even if any single attorney provided all services for a client. **Tr. I at 104-105.** Decisions as to salaries and bonuses were within the exclusive authority of the Executive Committee. **Tr. I at 97.**

The KCK law firm maintained its operating and trust accounts at Jefferson Bank and Trust. **Tr. I at 103.** Messrs. Klutho, Cody and Kilo were the only persons at KCK who were authorized to draw on firm accounts. **Tr. I at 103-104.** The firm utilized an official bank stamp labeled "for deposit only" to endorse all checks and to deposit all such checks into the appropriate firm bank account.

3. <u>Respondent's employment at KCK</u>

From 1984 through 1993, Respondent met, but did not exceed, KCK expectations with regard to the quality of his work on behalf of firm clients, the number of hours worked and the amount of billings to firm clients. **Tr. I at 106-107.** Respondent did not complain to any member of the KCK Executive Committee during this time period regarding his salary or the fact that he had not been offered shareholder status at the firm. **Tr. I at 107.**

By the early 1990's, Respondent began experiencing personal financial difficulties. **Tr. I at 109-110, 116.** He told John Kilo that he had significant credit card

debt, that he had problems "making ends meet" and that he was considering personal bankruptcy. **Tr. I at 110.** Mr. Kilo counseled Respondent against filing bankruptcy. In addition, Mr. Kilo and his wife, Susan, made a $10,000 personal loan to Respondent and his wife in June 1991 and a $15,000 loan to Respondent and his wife in September 1993 in order to provide some financial assistance. **Tr. I at 110-113; Informant's Exhibit 6.** Respondent's financial condition did not improve.

4. <u>The January 1994 meeting between Respondent and John Kilo.</u>

In January 1994, Respondent requested a face-to-face meeting with Mr. Kilo in order to discuss his ongoing financial difficulties and to inquire regarding his future at the KCK firm. **Tr. I at 114, 118.** A meeting was held in mid-January at a local restaurant. At the meeting, Mr. Kilo told Respondent that he had a future as a shareholder at KCK and that he would confer with the other members of the Executive Committee regarding Respondent's salary. **Tr. I at 116-118.** At the meeting, Respondent never (1) requested or demanded that he receive a percentage of client billings, (2) requested or demanded that KCK or Mr. Kilo make additional loans to Respondent, (3) requested or demanded that he be given a preference as to the client files on which he would work. **Tr. I at 119, 123-124.** Respondent did not produce or take any notes during the January 1994 meeting. **Tr. I at 120-121.**

At the January 1994 meeting, Mr. Kilo never told Respondent that he had any authority to bind KCK or that he was speaking on behalf of the Executive Committee. Mr. Kilo did not, in fact, have such authority. **Tr. I at 121.**

Mr. Kilo reported the results of his meeting with Respondent to the Executive Committee. **Tr. I at 121-122.** During the ensuing months, the Executive Committee gave Respondent a salary increase from $60,000 annually to $72,000 annually and agreed to offer shareholder status to Respondent. **Tr. I at 116-117, 122.** In addition, Mr. and Mrs. Kilo made several additional personal loans to Respondent and his wife. **Tr. I at 111-113; Informant's Exhibit 6.**

KCK records reflect that Respondent earned $98,800 in 1994, consisting of $70,800 in salary and $28,000 in bonuses. KCK records reflect that Respondent earned $142,000 in 1995, consisting of $72,000 in salary and $70,000 in bonuses. Finally, KCK records reflect that Respondent earned $93,250 in 1996, consisting of $72,000 in salary and $21,250 in bonuses. **Tr. I at 124-125; Informant's Exhibits 7, 8, 9 and 10.** In addition, Mr. and Mrs. Kilo made almost $50,000 in additional personal loans to Respondent during 1994. Notwithstanding these earnings increases and additional personal loans, Respondent's financial condition worsened.

5. <u>Respondent's Scheme to Steal Money from KCK</u>

Beginning in at least January 1994, Respondent began an elaborate scheme to embezzle attorney's fees from his employer, the KCK law firm. During the ensuing three years, Respondent stole at least $169,172.17 in fees properly payable to KCK and deposited most of those fees into his personal bank account.[3] **Stipulation Paras. 5(a)**

[3] The sum of $50,806.21 in KCK client fees was misappropriated by Respondent and deposited into the account of the law firm that he joined immediately after leaving KCK.

and 5(b); Stipulation Exhibits 1 and 2. No attorney or staff member at KCK had knowledge of the scheme while it was being carried out by Respondent. **Tr. I at 126.** The scheme to steal $169,172.17 from KCK consisted of the following conduct:

(a) Between October 1994 and November 1996, Respondent embezzled twenty-four checks, totaling $63,644.44, from KCK. Each of the checks was made payable to the Klutho, Cody & Kilo law firm. Without the knowledge or consent of KCK, Respondent stole an address stamp used by the firm for its mail and altered the stamp by covering the address portion of the stamp. Respondent altered the address stamp in order to make it appear to be a bank deposit stamp that would be accepted as an endorsement by Respondent's bank, which was a different bank than the one used by KCK. After altering the KCK stamp, he applied the stamp in the endorsement area of each of the checks. Respondent then intentionally forged the signature of John Kilo on the back of each check, signed his own name to each check and deposited the checks into his personal bank account. **Stipulation Para. 5(a); Stipulation Exhibit 1; Tr. I at 132-136; Informant's Exhibits 15 and 16.**

(b) Between December 1993 and April 1997, Respondent embezzled thirty-eight additional checks, totaling $105,527.73, from KCK. Each of these checks was made payable to Respondent personally. In each case, the checks represented payment by KCK clients for hours worked by KCK attorneys, including Respondent. In some cases, Respondent specifically requested that KCK clients make checks payable to him

---

Stipulation Para. 5(b); Stipulation Exhibit 2.

personally instead of to KCK.[4] In other cases, Respondent simply took checks made payable to him personally by the client and deposited each such check into either his personal account or into the account of the law firm that Respondent joined immediately after leaving KCK. **Stipulation Para. 5(b); Stipulation Exhibit 2; Tr. I at 136-137.**

(c) In at least one case, Respondent embezzled attorney's fees from KCK by bartering with a client for personal services in exchange for payment of the KCK invoice. Thus, Richard LaRico testified that Respondent, while at KCK, provided legal services in 1995 and 1996 in connection with the sale of his business, Manchester Road Auto Parts. **Tr. I at 138-139.** Mr. LaRico also testified that he owned a home remodeling business and that Respondent hired him in 1996 to remodel the bathroom in Respondent's home. **Tr. I at 142.** By summer 1996, Mr. LaRico owed KCK the sum of $1,701.18 in legal fees associated with the sale of his business. **Tr. I at 140-141; Informant's Exhibit 11.** Similarly, Respondent owed Mr. LaRico the sum of $1,700.83 for the cost of the home remodeling. **Tr. I at 143; Informant's Exhibit 12.** Respondent suggested to Mr. LaRico's wife that in lieu of Respondent paying Mr. LaRico's remodeling bill and Mr.

[4] For example, Bruce Meyer, a KCK client, testified at the Master's hearing that Respondent met with him and informed him that he owed an additional $4,000 in attorney's fees to KCK for the bankruptcy matter being handled by the firm. Respondent further instructed Mr. Meyer to make the check payable to him personally instead of to KCK. **Tr. I at 76-79; Informant's Exhibit 4.** Respondent deposited Mr. Meyer's check into his personal bank account. **Stipulation Exhibit 2.**

LaRico paying the KCK invoice, Respondent would simply pay the KCK invoice directly. Mr. LaRico agreed to this arrangement. **Tr. I at 144.** In fact, however, Respondent never paid the LaRico invoice for legal services and instead directed the KCK staff to "write off" the LaRico bill. **Informant's Exhibits 11 and 12.** As a result of his actions, Respondent embezzled an additional $1,701.18 in fees properly payable to the KCK law firm.

In December 1996, the KCK Executive Committee met with Respondent to review his performance and to notify him of the amount of his 1996 bonus. At the end of the meeting, Respondent announced to the Executive Committee that he was leaving KCK. **Tr. I at 128.** Respondent left KCK during January 1997. Respondent continued to receive funds properly payable to KCK for several weeks after he left KCK and joined his new law firm. Respondent deposited these KCK funds into the account of his new law firm. **Stipulation Exhibit 2.**

In June 1998, Bruce Meyer, a KCK client, notified Vic Klutho that he had met with Respondent in May 1996 and that Respondent stated that the retainer that Mr. Meyer had paid to KCK had been exhausted. **Tr. I at 130.** Respondent requested that Mr. Meyer pay an additional $4,000 in attorney's fees to KCK and directed Mr. Meyer to make the attorney's fee check payable to Respondent personally instead of to KCK. Mr. Meyer thought Respondent's request was unusual because he had previously always made his attorney's fee checks payable to KCK. **Tr. I at 76-80.**

Based upon the information provided by Mr. Meyer, KCK began an internal investigation of the manner in which Respondent had handled firm clients and firm fees

while employed at KCK. **Tr. I at 130-131.** In addition, KCK notified Michael Reap, the First Assistant United States Attorney of Respondent's conduct. **Tr. I at 131.** The U.S. Attorney's office opened an investigative file on or about July 18, 1998 and issued subpoenas duces tecum directed to the bank accounts of Respondent and his wife. **Tr. I at 276-277.**

6. <u>The August 1998 meeting between Respondent and John Kilo</u>

John Kilo sent Respondent a letter dated July 15, 1998 wherein he made a demand for payment in full of the outstanding loan balance of $38,000 owed by Respondent and his wife to Mr. and Mrs. Kilo. **Tr. I at 156; Informant's Exhibit 17.** On July 18, 1998, Respondent called Mr. Kilo and disputed the amount owing under the loans, claiming that KCK owed Respondent money under an alleged arrangement whereby Respondent would receive 30% of his collections received by the firm. **Tr. I at 156-157.** This was the first knowledge by any attorney at KCK of an alleged arrangement between Respondent and the KCK firm. **Tr. I at 159.** Mr. Kilo immediately denied the existence of such an arrangement and instructed Respondent to prepare a document reflecting the amounts that Respondent alleged were due and owing to him by KCK.[5] **Tr. I at 158-159.** Respondent never mentioned to Mr. Kilo during this telephone conversation that he

[5] By the time of this telephone call, Mr. Kilo and the other attorneys at KCK were aware of Respondent's scheme to steal firm funds. They were not aware, however, of the full magnitude of the scheme or the total amounts stolen. **Tr. I at 160.**

had embezzled funds from KCK beginning in 1994 and continuing through early 1997. **Tr. I at 160.**

Respondent and Mr. Kilo met in mid-August 1998 at a local restaurant. **Tr. I at 160.** At the meeting, Respondent produced a document that purported to reflect the additional amounts owing from KCK to Respondent under the alleged 30% arrangement. **Tr. I at 161; Informant's Exhibit 3.** According to Respondent's calculations, KCK owed Respondent the sum of $8,840, representing the amount by which Respondent's "expected compensation" exceeded his actual compensation at KCK for the years 1994 through 1996. Significantly, Respondent never explained why he waited almost two years after leaving KCK to claim that the firm owed him additional money.

Respondent next claimed that the amount he owed to Mr. and Mrs. Kilo for the personal loans made by Mr. and Mrs. Kilo to Respondent and his wife should be reduced by the amount allegedly owing from KCK to Respondent. **Tr. I at 161-168.** Significantly, Respondent continued to hide the fact that he had stolen almost $170,000 from KCK during this same time period. **Tr. I at 169-170.**

Mr. Kilo's reaction to Respondent's assertions was immediate and unambiguous. Mr. Kilo denied the existence of any separate arrangement with Respondent and denied that KCK owed Respondent any additional monies. In addition, Mr. Kilo rejected Respondent's attempt to link the personal loan made to Respondent with any alleged amounts that Respondent claimed were owed by KCK. **Tr. I at 161-162.**

7. The FBI Investigation and the Subsequent Criminal Proceedings

On September 29, 1998, FBI Special Agent Jeffrey Jensen interviewed Respondent outside Respondent's home in Chesterfield, Missouri.[6] **Tr. I at 11-12; Informant's Exhibit 1.** At that time, Respondent admitted the scheme under which he took client funds belonging to KCK and deposited such funds into his own personal account. **Tr. I at 17.** Respondent then described in detail the manner in which he took the funds from the KCK firm. **Tr. I at 22-26; Informant's Exhibit 1.**

Based upon the government's investigation, the Grand Jury returned a nine-count Indictment against Respondent on November 4, 1999. Counts I through VII charged that between 1994 and 1997, Respondent defrauded and embezzled $150,000 from the KCK firm. Counts VIII and IX alleged that Respondent willfully filed tax returns that he knew to be untrue by underreporting income to the Internal Revenue Service for the tax years 1995 and 1996, respectively. **Tr. I at 279; Stipulation Para. 6; Stipulation Exhibit 3.**

On May 1, 2000, Respondent and the United States signed a Stipulation of Facts Relative to Sentencing. **Stipulation Para. 7; Stipulation Exhibit 4.** The Stipulation memorialized the parties' plea agreement. In exchange for Respondent's plea of guilty to Count IX of the indictment, the government agreed to move the federal district court to dismiss the other counts. Respondent agreed, inter alia, to cooperate with the IRS in resolving his tax liability for 1995 and 1996, to give Travelers Property Casualty, KCK's bonding company, a consent judgment and settlement agreement in the amount of $164,374.04, to repay in full the loans made by Mr. and Mrs. Kilo and to "voluntarily

surrender his law licenses immediately at the time of sentencing if the Court accepts this plea bargain." **Tr. I at 282; Stipulation Exhibit 4.** According to First Assistant United Stated Attorney Michael Reap, it was the belief, understanding and intent of the parties that the conditions set forth in the Stipulation of Facts Relative to Sentencing would be binding on the parties. **Tr. I at 284.**

The elements of the federal offense to which Respondent pled guilty are set forth in the Stipulation of Facts Relative to Sentencing. The elements include the falsity of the tax form, that Respondent knowingly put materially false information in the form and that he acted willfully. **Stipulation Exhibit 4.** By signing the Stipulation, Respondent acknowledged that he understood the elements of the crime and admitted committing them.

District Court Chief Judge Jean C. Hamilton accepted the plea agreement and found Respondent guilty of the Count IX felony of filing a false federal tax return. **Tr. I at 281; Informant's Exhibit 14.**

The sentencing hearing before Chief Judge Hamilton occurred on August 4, 2000. **Stipulation Para. 8; Stipulation Exhibit 5.** Respondent's counsel on the federal criminal charges, David Capes, represented to the Court that ". . . Mr. Kazanas is surrendering his law license. That will take place. That's probably the most devastating thing that can happen to a person who spent years of his life and especially coming out of his circumstances to achieve a law license to practice successfully in this community. I don't think there will be any greater penalty than that." **Stipulation Exhibit 5 at pp. 10-**

---

[6] Special Agent Jensen is now an Assistant United States Attorney. **Tr. I at 11.**

11. The Court sentenced Respondent to five years probation with six months of home confinement and imposed several additional conditions. With regard to restitution, the Court stated that "I am not going to order mandatory restitution. I'm going to abide by what the parties agreed to. I realize there may be additional litigation and that's something for those individuals to pursue." **Stipulation Exhibit 5 at p. 17.**

8. <u>Respondent's Failure to Surrender his Law License and Related Conduct</u>

On May 2, 2000, one day after signing the Stipulation of Facts Relative to Sentencing and agreeing to voluntarily surrender his law licenses immediately at the time of sentencing, Respondent wrote to the Chief Disciplinary Counsel ("CDC") and acknowledged that he had "begun the process of taking the appropriate steps of fulfilling my obligations of maintaining the integrity of the legal profession with respect to my law license, namely making preparations to surrender my license to practice law in this State voluntarily by application to the Supreme Court of Missouri." **Stipulation Exhibit 9.** By letter dated May 8, 2000, Respondent requested a sample surrender application. **Stipulation Exhibit 11.** The CDC's office sent Respondent two sample surrender applications by letter dated May 10, 2000.[7] **Stipulation Exhibit 13.**

In response to a telephone inquiry from Respondent, the CDC's office wrote to Respondent on June 23, 2000 and explained to Respondent that the Rule 5.25 voluntary surrender procedure would require him to advise the Supreme Court what ethical

[7] The CDC also sent Respondent a copy of Supreme Court Rule 5.25 pertaining to the voluntary surrender of a law license.

misconduct underlay his application, and that he would have to admit or deny that the misconduct had occurred. **Stipulation Exhibit 15.** It was also explained to Respondent that disbarment would likely follow a voluntary surrender, that he could not apply for reinstatement for five years after disbarment, and that he would have to retake and pass the bar examination within one year prior to filing an application for reinstatement. Significantly, in response to an inquiry from Respondent, the CDC's office also stated as follows:

> "Be advised that an election to become inactive under Rule 6.03 is very different from a license surrender under Rule 5.25. In light of the serious allegations pending against you, this office would not agree to forego initiation of disciplinary action should you merely go on inactive status." **Stipulation Exhibit 15.**

On July 17, 2000, Respondent confirmed by letter to the CDC that his application for voluntary surrender of license "will have to be immediately filed with the Office of Chief Disciplinary Counsel after my sentencing by U.S. District Court Chief Judge Jean Hamilton for the Eastern District of Missouri, which has been reset by the Judge from this Friday to 9:00 a.m. on Friday, August 4, 2000." **Stipulation Exhibit 16.**

As stated above, the sentencing hearing before Chief District Judge Hamilton occurred on August 4, 2000. It is undisputed that Respondent failed to surrender his license as previously agreed on the date of sentencing. **Tr. I at 288.**

The very next day, August 5, 2000, Respondent wrote a letter addressed to "Dear Friend" and sent it to various addressees. **Stipulation Exhibit 6.** In the letter, Respondent acknowledged that Chief District Judge Hamilton had ordered "that I must

immediately surrender my license to practice law." Respondent then stated that "I will be concurrently requesting from the Missouri Supreme Court to provide for a predetermined period of time in which I may thereafter seek reinstatement of my license to practice law in the State of Missouri." **Stipulation Exhibit 6.**

Respondent next wrote a letter "To the Editor" that appeared in the August 14, 2000 edition of the Missouri Lawyers Weekly. **Stipulation Exhibit 7.** This latter letter makes no reference to a requirement that Respondent immediately surrender his license. Instead, Respondent stated that "I have begun proceeding toward cooperating with the Missouri Supreme Court regarding the disposition of my license to practice law in the state of Missouri." **Stipulation Exhibit 7.**

On August 10, 2000, less than one week after Respondent's sentencing in federal court, Respondent's counsel wrote a letter to the CDC office in which he stated as follows:

> "Therefore, the purpose of this letter is to provide you with the above information that will authorize your office to immediately file an Information directly in the Supreme Court on the basis that Mr. Kazanas has pled guilty of a felony under the laws of the United States of America." **Stipulation Exhibit 17.**

On September 14, 2000, the OCDC filed its Information for Show Cause and Motion for Discipline pursuant to Rule 5.21 with the Supreme Court requesting an order to show cause why Respondent should not be disciplined as a consequence of his guilty plea and his failure to file an application for surrender of his license. On October 2,

2000, Respondent filed his Answer and Response to the OCDC's Information and consented to an immediate order suspending him from the practice of law.

In the midst of the proceedings regarding Respondent's law license, Respondent commenced a lawsuit in September 2000 in the Circuit Court of the City of St. Louis, Missouri captioned **Dan J. Kazanas, Plaintiff v. Klutho, Cody & Kilo, P.C., et al., Defendants**, being cause number 002-077871 (the "Lawsuit"). **Stipulation Para. 25; Stipulation Exhibit 20.** In the Lawsuit, Respondent included allegations of fraud in the inducement, breach of contract, fraud and intentional interference with a business expectancy against the KCK firm and John Kilo. Respondent dismissed the Lawsuit with prejudice on January 10, 2001. **Stipulation Para. 26.**

On October 16, 2000, the Court suspended Respondent from the practice of law in this state and ordered Respondent to show cause why an order of disbarment should not issue.

On October 27, 2000, the United States of America filed a Motion to Revoke Defendant's Sentence in the federal criminal case because of Respondent's violations of the plea bargain, including Respondent's failure to surrender his license. **Stipulation Para. 27; Stipulation Exhibit 21.** The United States filed a Supplemental Motion to Revoke Sentence and Guilty Plea on November 6, 2000. **Stipulation Para. 28; Stipulation Exhibit 22.** The United States subsequently dismissed its Motions to Revoke on March 2, 2001 after Respondent filed his Application for Voluntary Surrender. **Stipulation Para. 30.**

Finally, on January 18, 2001, more than five months after Respondent was sentenced and had agreed to "immediately" surrender his license, Respondent filed his Application for Voluntary Surrender of License Pursuant to Rule 5.25 with the Supreme Court. On February 26, 2001, the OCDC filed with the Court its Report and Recommendation regarding Respondent's application for voluntary surrender. On February 28, 2001, the Supreme Court denied Respondent's application for voluntary surrender.

On March 7, 2001, the matter came before the Court for oral argument. On March 8, 2001, the Court issued its "Commission to Take Testimony" and appointed the Honorable McCormick V. Wilson to serve as a Master in this case. The Court directed that the Master "inquire into issues touching on appropriate discipline, including the source of income that Respondent failed to report on his income taxes for the years in question." The Court also directed the Master to file his findings of fact, particularly with respect to the source of the income upon which taxes were not paid by Respondent, together with his other findings of fact, conclusions of law and recommendation as to discipline.

9. The Special Master's Report

On April 17, 2002, the Master filed his Report with the Court recommending that Respondent be disbarred from the practice of law. The Master found that Respondent had forged Mr. Kilo's name to the back of KCK checks, that he knowingly failed to report 70% of the stolen money on Schedule C of his income tax return and that it was not reasonable for Respondent to be in the position of an attorney seeking the trust and

confidence of members of the public. With regard to this Court's interest in the source of income that Respondent failed to report on his income taxes, the Master made the following significant finding:

> "It is the Master's conclusion that by the use of the altered return address stamp and the forgery of John Kilo's name on the back of the checks, he unlawfully took money that belonged to the firm and converted it to his personal use by depositing it in his and his wife's personal checking account." **Master's Report at 4.**

In recommending that Respondent be disbarred from the practice of law, the Master also found as follows:

> "In conclusion, the Master wishes to comment that he believes that Respondent convinced himself that he was entitled to additional compensation; that he had a binding agreement with the firm to pay him 30% of the fees on his business; that the firm wrongfully denied him that money; that he was fully entitled to enforce the agreement by self help; that putting the money in his and his wife's joint checking account with the return address stamp and forged signature was not wrong, and that under reporting these funds to the IRS was justified because it would all be straightened out eventually. No matter how sincerely he believed each of these propositions, no one in his position who did believe them should be allowed to practice law." **Master's Report at 7.**

On or about May 17, 2002, Respondent filed Exceptions to the Master's Report in which he asserted forty-five (45) separate areas of disagreement with the Master's findings, conclusions and recommendation. The Master did not rule on the exceptions

within thirty days after filing and they were therefore deemed denied for all purposes pursuant to Missouri Supreme Court Rule 68.03(g).

On or about May 17, 2002, Respondent also filed a Request for Hearing with respect, generally, to the Master's Report and, specifically, to the appropriate discipline of Respondent's license to practice law. By Order dated June 25, 2002, the Court sustained Respondent's Request for Hearing.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISBAR RESPONDENT AS RECOMMENDED BY THE SPECIAL MASTER BECAUSE INFORMANT DEMONSTRATED BY MORE THAN A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) IN THAT RESPONDENT COMMITTED PROFESSIONAL MISCONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT AND MISREPRESENTATION AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY (1) STEALING MONEY FROM HIS LAW FIRM, (2) PLEADING GUILTY TO WILLFULLY FILING A MATERIALLY FALSE FEDERAL TAX RETURN, (3) REFUSING TO SURRENDER HIS LAW LICENSE IMMEDIATELY AT THE TIME OF THE SENTENCING HEARING AS STIPULATED AND AGREED TO IN HIS PLEA BARGAIN WITH THE UNITED STATES, AND (4) ENGAGING IN A PATTERN AND COURSE OF CONDUCT THAT WAS MARKED BY MORAL TURPITUDE IN HIS PRIVATE, PROFESSIONAL AND SOCIAL DUTIES.

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-8.4(d), Rules of Professional Conduct

In re Frick, 694 S.W.2d 473 (Mo. banc 1985)

In re Duncan, 844 S.W.2d 443 (Mo. banc 1993)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT AS RECOMMENDED BY THE SPECIAL MASTER BECAUSE BECAUSE RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) IN THAT RESPONDENT COMMITTED PROFESSIONAL MISCONDUCT INVOLVING DISHONESTY, DECEIT AND MISREPRESENTATION AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-8.4(d), Rules of Professional Conduct

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISBAR RESPONDENT AS RECOMMENDED BY THE SPECIAL MASTER BECAUSE INFORMANT DEMONSTRATED BY MORE THAN A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) IN THAT RESPONDENT COMMITTED PROFESSIONAL MISCONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT AND MISREPRESENTATION AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY (1) STEALING MONEY FROM HIS LAW FIRM, (2) PLEADING GUILTY TO WILLFULLY FILING A MATERIALLY FALSE FEDERAL TAX RETURN, (3) REFUSING TO SURRENDER HIS LAW LICENSE IMMEDIATELY AT THE TIME OF THE SENTENCING HEARING AS STIPULATED AND AGREED TO IN HIS PLEA BARGAIN WITH THE UNITED STATES, AND (4) ENGAGING IN A PATTERN AND COURSE OF CONDUCT THAT WAS MARKED BY MORAL TURPITUDE IN HIS PRIVATE, PROFESSIONAL AND SOCIAL DUTIES.

The Rules of Professional Conduct provide that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation or to engage in conduct that is prejudicial to the administration of justice. *Rules 4-8.4(c) and 4-8.4(d).* Respondent violated these basic precepts by stealing $169,172.44 from his law

firm, by pleading guilty to willfully filing a materially false federal tax return, by refusing to surrender his law license immediately at the time of sentencing and by engaging in a course of conduct marked by moral turpitude.

Before discussing the serious violations of the Rules of Professional Conduct committed by Respondent and the proper discipline that will protect the public and preserve the integrity of the legal profession, Informant believes that it would be useful to review the important role that a lawyer in private practice plays in our society, in his profession and within his law firm.

The most fundamental duty which a lawyer owes to the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when a lawyer engages in illegal conduct, such as theft, embezzlement, misrepresentation or other conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. See Introduction, Rule 5.0, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

To preserve the integrity of the legal profession means, in part, to make decisions that allow the public a sense of confidence in the administration of justice, including a sense of confidence in those who are officers of the court. Members of the profession have an obligation to set an example of strict adherence to lawful conduct, as well as to acknowledge that conduct in a criminal incident is, in fact, criminal. *In re McBride*, 938 S.W.2d 905, 910 (Mo. banc 1997) (Covington concurrence).

A partner in a law firm also occupies a position of trust and owes a strict fiduciary duty to the other partners in the firm. In *In re Cupples*, 952 S.W.2d 226, 235 (Mo. banc 1997), the Court cited with approval the controlling standard first set out by Justice Cardoza in *Meinhard v. Salmon*:

> "Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a work-a-day world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." 164 N.E. 545, 546 (N.Y. 1928).

The Court noted that a partner's fiduciary duty includes the duty to be fair, the duty not to put self-interest before the interests of the partnership and the duty not to compete with the partnership in the business of the partnership. *In re Cupples*, 952 S.W.2d at 235-236. As discussed below, Respondent breached each of these duties owed to the public, the profession and to his fellow partners.

Respondent pled guilty to the felony of filing a federal tax return that he did not believe to be true in material respects. It is undisputed that Respondent signed and submitted to the Internal Revenue Service a federal income tax return that he knew to be materially false by under-reporting income on Schedule "C" of his 1996 tax return in violation of Title 26, United States Code, Section 7206(1). Respondent admitted to a "knowing failure to report substantial income." **Stipulation Exhibit 4.** This conduct,

standing alone, violated Rules 4-8.4(c) and (d) and warranted Respondent's suspension pursuant to Rule 5.21, authorizing the automatic removal or suspension of an attorney upon the mere showing of a conviction of a crime involving moral turpitude.[8] *In re Frick*, 694 S.W.2d 473, 478 (Mo. banc 1985).

By the well-settled law in Missouri, all tax offenses, and it is notable that the one to which Respondent pled guilty is a felony, are crimes of moral turpitude. *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1993). In explaining its reasoning, the Court in the *Duncan* case stated:

> "Willful failure to pay federal income taxes is a crime of moral turpitude. Respondent's plea means he was more than careless, and voluntarily and intentionally violated the legal duty to pay taxes. Respondent 'willfully failed to pay those [federal income] taxes, although he possessed the funds to do so.' It is dishonest not to pay taxes when Respondent knows he owes them and has the capacity to pay. It reflects adversely on

---

[8] "Moral turpitude" has been defined as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985). See also *Neibling v. Terry*, 177 S.W.2d 502 (Mo. banc 1944); *In re McNeese*, 142 S.W.2d 33, 34 (Mo. banc 1940); *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929).

> Respondent's trustworthiness . . . . Public confidence in the Bar cannot be maintained if attorneys may practice, with impunity, after tax convictions." Id.

Other Supreme Court decisions have confirmed that criminal conduct involving the filing of a false and fraudulent tax return and the willful failure to pay income taxes constitutes moral turpitude. See *In re Kueter*, 501 S.W.2d 486 (Mo. banc 1973); *In re MacLeod*, 479 S.W.2d 443 (Mo. banc 1972); *In re Lurkins*, 374 S.W.2d 67 (Mo. banc 1964); *In re Foley*, 364 S.W.2d 1 (Mo. banc 1963); *In re Canzoneri*, 334 S.W.2d 30 (Mo. banc 1960). See also, *Annotation, "Federal Income Tax Conviction as Involving Moral Turpitude Warranting Disciplinary Action Against Attorney*, 63 A.L.R.3d 476 (1975, Supp. 1992).

In this case, as the Court correctly surmised from the prior Rule 5.21 proceedings, there is more involved than a plea of guilty to one federal tax felony. As the Court observed in *Frick*, ". . . we are no longer concerned with the mere fact of conviction; rather . . . we must examine respondent's entire course of conduct . . ." Applying the holding in *Frick* to the case at bar, Informant respectfully submits that in making a determination as to the appropriate discipline, the Court is required to examine Respondent's entire course of conduct. The overwhelming record evidence clearly supports a finding that moral turpitude was pervasive in Respondent's course of conduct in his dealings with the KCK law firm and the clients of the KCK law firm, in his tax obligations to the federal government and in his obligations to the Bar.

Respondent embezzled $169,172.44 in attorneys' fees from KCK. Between 1994 and 1997, Respondent embezzled client fees from KCK and deposited those fees

into either his personal bank account or into the account of the law firm that he joined after resigning from KCK. No attorney or staff member at KCK had knowledge of the scheme while it was being carried out by Respondent. This conduct was illegal, reprehensible and establishes moral turpitude that warrants disbarment.

Respondent explained his illegal conduct by asserting that he had made an agreement with John Kilo under which Respondent would allegedly receive 30% of the fees collected by KCK from clients that he brought to the firm. Respondent then asserted that he began "self-enforcement"[9] of the agreement when KCK failed to pay him his 30% share. **Tr. II at 270, 279**. The following evidence establishes that no such agreement existed between Respondent and KCK.

- John Kilo, a member of the KCK Executive Committee and the person who met with Respondent at all relevant times, unequivocally denied that any 30% fee-splitting arrangement was ever mentioned, discussed or agreed upon with Respondent.
- The uncontroverted evidence established that no attorney at KCK ever received a

[9] Respondent's use of the phrase "self-enforcement" to explain his stealing and embezzlement is significant and demonstrates his failure and refusal to accept responsibility for his illegal conduct. The Court has specifically held that lawyers have an obligation to strictly adhere to lawful conduct as well as to acknowledge that in a criminal incident is, in fact, criminal. See *In re McBride*, 938 S.W.2d 905, 910 (Mo. banc 1997) (Covington concurrence).

pre-determined share or percentage of attorney's fees collected from firm clients, even if any single attorney provided all services for a client.

- There was no individual ownership interest in clients at KCK. When a KCK attorney introduced a new client to the firm, that client became a firm client. Even though attorneys at KCK had individual responsibilities with regard to clients (e.g., billing responsibility), the clients at all times belonged to the firm. In that same regard, the intra-firm policy at KCK was that all attorneys' fees collected from KCK clients belonged to the firm and KCK maintained a proprietary interest in the work performed by KCK attorneys on behalf of the KCK clients.
- KCK was internally managed by a 3-person Executive Committee consisting of Vic Klutho, Edward Cody and John Kilo. The Executive Committee managed all aspects of the firm, including decisions regarding bonuses. No individual member of the Executive Committee had authority to act on behalf of KCK or to otherwise bind the law firm.
- Respondent produced no written evidence of any alleged agreement, except for some barely legible phrases written on the flap of an envelope that he claimed he prepared in advance of the meeting and presented to Mr. Kilo at the meeting. **Respondent's Exhibit C and C-1**. It defies logic that Respondent would not have reduced the specific terms of such a significant agreement with his employer to a formal document, particularly if he had taken the time to prepare it prior to the meeting. In this regard, it is noteworthy that at the subsequent August 1998 meeting between Respondent and John Kilo, Respondent presented Mr. Kilo with

a well-organized draft of a document that purported to demonstrate that the KCK firm owed him additional monies as a result of the non-existent 30% agreement. **Informant's Exhibit 3.** Had such an agreement actually existed, it is reasonable to conclude that it would have been evidenced by a formal document prepared either by Respondent or by KCK. No such document exists because no such agreement ever existed.

- The stipulated evidence demonstrates that the first two client checks stolen by Respondent were dated December 23, 1993 and December 29, 1993. **Stipulation Exhibit 2.** These dates are in advance of the January 1994 meeting where Respondent alleges that he made an agreement with John Kilo. Clearly, no fee-splitting agreement existed because Respondent began stealing money from KCK before the date of the meeting where Respondent himself alleges the non-existent agreement was first discussed.
- Respondent's embezzlement of KCK money from KCK in December 1993 and January 1994 could not have been related to the self-enforcement of any alleged fee-splitting agreement because Respondent could not have formed a belief at that time that the firm was not abiding by the non-existent agreement.
- Respondent testified that under his alleged agreement with KCK, he was to receive his 30% share of his collections on June 30 and December 31. **Tr. II at 163, 168.** He further testified that he questioned John Kilo in July 1994 after failing to receive his June 30 payment. According to Respondent, Mr. Kilo told Respondent that KCK paid bonuses in August, as it had done in the past.

However, instead of inquiring further of Mr. Kilo, Respondent simply acquiesced. **Tr. II at 176.** It is simply incredible to accept that Respondent would not have confronted Mr. Kilo immediately regarding the amounts due him under the alleged agreement. The fact is that the conversation never occurred because no such agreement ever existed.

- It is illogical to conclude that Respondent would have been so secretive about diverting money from KCK if he truly believed that he was entitled to a 30% share of his collections. Even after he began to "self enforce" the alleged agreement, why would he fail to disclose his actions if such an agreement actually existed? His failure to disclose his actions and his failure to claim that past due amounts were still owing from KCK until his meeting with John Kilo in August 1998 (and then only after Mr. Kilo demanded payment of past due loan amounts) evidences his own belief that no such agreement existed. Respondent's behavior in covertly directing money to himself is totally inconsistent with his purported claim to entitlement.

Aside from Respondent's protestations to the contrary, there is simply no credible evidence to support the assertion that any agreement existed between Respondent and KCK under which he would receive a pre-determined portion of his collections, regardless of the success of the rest of the firm. Such an agreement would be contrary to the very foundation of a law firm where each attorney experiences financial rewards in direct relation to the success or failure of the entire enterprise. It simply defies logic that KCK would offer such an arrangement for the first time in its history to an attorney who

had not exceeded firm expectations and who had been an associate at the firm for ten years. The overwhelming evidence instead supports the conclusion that Respondent embezzled the $169,172.17 from KCK because of personal financial difficulties.

Respondent engaged in an illegal and fraudulent scheme to embezzle funds from KCK. There can be no dispute that the underlying conduct by which Respondent embezzled funds from the KCK law firm was itself illegal and indicative of Respondent's moral turpitude. The scheme consisted of the following dishonesty:

(a) During a period of more than two years, between October 1994 and November 1996, Respondent embezzled twenty-four checks, totaling $63,644.44, from KCK. Each of the checks was made payable to the Klutho, Cody & Kilo law firm. Without the knowledge or consent of KCK, Respondent stole an address stamp used by the firm for its mail and altered the stamp by covering the address portion of the stamp. Respondent altered the address stamp in order to make it appear to be a bank deposit stamp that would be accepted as an endorsement by his bank, which was a different bank than the one used by KCK. After altering the KCK stamp, he applied the stamp in the endorsement area of each of the checks. Respondent then intentionally forged the signature of John Kilo on the back of each check, signed his own name to each check and deposited the checks into his personal bank account.

The fact that Respondent engaged in this scheme for over two years is significant and demonstrates his lack of moral character. He could have had pangs of doubt and conscience at any time along the way and decided to stop stealing money. He could have admitted his actions to the Executive Committee at KCK and made arrangements to make

restitution to the firm. Instead, Respondent simply continued to misappropriate, embezzle and steal client fees that rightfully belonged to his employer. The only reason that Respondent stopped stealing money in this manner from KCK was that he decided to leave the firm.

(b) Between December 1993 and April 1997, Respondent embezzled thirty-eight additional checks, totaling $105,527.73, from KCK. Each of these checks was made payable to Respondent personally. In each case, the checks represented payment by KCK clients for hours worked by KCK attorneys, including Respondent. In some cases, Respondent specifically requested that KCK clients make checks payable to him personally instead of to KCK. In other cases, Respondent simply took checks made payable to him by the client and deposited each such check into either his personal account or into the account of the law firm that Respondent joined immediately after leaving KCK.

Respondent's lack of trustworthiness, honesty and moral character are reflected both in the theft of these checks and also in his claim even at the trial in this matter that these checks were written by his own clients and were taken as part of his decision to "self enforce" the alleged 30% agreement with KCK. Thus, Respondent's Exhibit A at trial purports to demonstrate that the amount of fees stolen by Respondent closely approximates 30% of the fees collected by the KCK from Respondent's clients. Respondent's expert witness, Calvin Culp testified that in preparing Respondent's Exhibit A, he relied solely on Respondent's representations that each check included therein represented a payment by a client belonging to Respondent. Both Exhibit A and

Mr. Culp's entire testimony are fatally flawed, however, due to the fact that several of the clients listed therein were never Respondent's clients.[10] In reality, Respondent simply stole fees from those KCK clients for whom he had performed services and from whom he could most easily steal fees intended for the law firm. The nonexistent agreement with KCK was simply a convenient and easy way for Respondent to justify his illegal conduct after the fact to the government, to this Court, to the Bar and to himself.

In order to carry out his illegal scheme, Respondent lied to KCK clients.

Bruce Meyer, a long-time client of KCK, testified that he met with Respondent in May 1996 regarding a bankruptcy matter being handled for him by Respondent. In that meeting, Respondent advised Mr. Meyer that the initial retainer that Mr. Meyer had paid to KCK had been exhausted. Respondent requested that Mr. Meyer pay an additional $4,000 in attorney's fees to KCK and directed Mr. Meyer to make the attorney's fee check payable to Respondent personally instead of to KCK. Mr. Meyer thought

---

[10] Thus, KCK partner Robert Trame testified that clients such as Credit Resources, Inc., Frank J. Stebbins, Wilson Marble, Inc., Apted-Hulling, Inc., and Klauber Machine & Gear Company were long-standing KCK clients that had been introduced to the firm by attorneys other than Respondent. **Tr. I at 312-316**. See also: **Informant's Exhibit 18** for a complete listing of such clients. It appeared that when Respondent would open a file on a new matter on behalf of a long-time KCK client, Respondent claimed that client matter as his own. Mr. Trame testified that this practice was contrary to established procedures at KCK. **Tr. I at 312-314**.

Respondent's request was unusual because he had previously always made his attorney's fee checks payable directly to KCK.[11] He trusted Respondent, however, and made the check payable as directed. Respondent stole the check and deposited it into his personal bank account.

Respondent stole money from KCK by bartering directly with clients. In at least one case, Respondent embezzled attorney's fees from KCK by bartering with a client for personal services in exchange for payment of the KCK invoice. Thus, Richard LaRico testified that Respondent, while at KCK, provided legal services in 1995 and 1996 in connection with the sale of his business, Manchester Road Auto Parts. Mr. LaRico also testified that he owned a home remodeling business and that Respondent hired him in 1996 to remodel the bathroom in Respondent's home. By summer 1996, Mr. LaRico owed KCK the sum of $1,701.18 in legal fees associated with the sale of his business. Similarly, Respondent owed Mr. LaRico the sum of $1,700.83 for the cost of the home remodeling. Respondent suggested to Mr. LaRico's wife that in lieu of Respondent paying Mr. LaRico's remodeling bill and Mr. LaRico paying the KCK invoice, Respondent would simply pay the KCK invoice directly. Mr. LaRico agreed to this arrangement. In fact, however, Respondent never paid the LaRico invoice for legal

[11] Mr. Meyer testified that he was so agitated by Respondent's request that he initially wrote the check for $400,000 instead of $4,000. Mr. Meyers had to void the first check and write a second check in the correct amount payable to Respondent personally. **Tr. I at 83-84**.

services and instead directed the KCK staff to "write off" the LaRico bill. See Exhibits 11 and 12. As a result of his actions, Respondent embezzled an additional $1,701.18 in fees properly payable to the KCK law firm.

Even after leaving KCK, Respondent furthered his scheme by attempting to renege on his loan repayments to John Kilo. In 1991, because of Respondent's personal financial difficulties, John and Susan Kilo began making a series of personal loans to Respondent and his wife. At the time he left the KCK firm, Respondent owed the Kilos an outstanding principal balance of $38,000 on the loans. On July 15, 1998, Mr. Kilo sent Respondent a letter wherein he made a demand for payment in full of the outstanding balance owed by Respondent. On July 18, 1998, Respondent called Mr. Kilo and disputed the amount owing under the loans, claiming that KCK owed Respondent money under an alleged arrangement whereby Respondent would receive 30% of his collections received by the firm. This was the first knowledge by any attorney at KCK of an alleged arrangement between Respondent and the KCK firm. Mr. Kilo immediately denied the existence of such an arrangement and instructed Respondent to prepare a document reflecting the amounts that Respondent alleged were due and owing to him by KCK.[12] Respondent never mentioned to Mr. Kilo during this telephone conversation that

[12] By the time of this telephone call, Mr. Kilo and the other attorneys at KCK were aware of Respondent's scheme to steal firm funds. They were not aware, however, of the full magnitude of the scheme or the total amounts stolen.

he had embezzled funds from KCK beginning in 1994 and continuing through early 1997.

Respondent and Mr. Kilo met in mid-August 1998 at a local restaurant. At the meeting, Respondent produced a document that purported to reflect the additional amounts owing from KCK to Respondent under the alleged 30% arrangement. See Informant's Exhibit 3. According to Respondent's calculations, KCK owed Respondent the sum of $8,840, representing the amount by which Respondent's "expected compensation" exceeded his actual compensation at KCK for the years 1994 through 1996. Respondent next claimed that the amount he owed to Mr. and Mrs. Kilo for the personal loans made by the Kilos to Respondent and his wife should be reduced by the amount allegedly owing from KCK to Respondent. Significantly, Respondent continued to hide the fact that he had stolen almost $170,000 from KCK during this same time period.

Mr. Kilo's reaction to Respondent's assertions was immediate and unambiguous. Mr. Kilo denied the existence of any separate arrangement with Respondent and denied that KCK owed Respondent any additional monies. In addition, Mr. Kilo rejected Respondent's attempt to link the personal loan made to Respondent with any alleged amounts that Respondent claimed were owed by KCK.

This episode is significant insofar as it demonstrates Respondent's total lack of honesty and trustworthiness. Instead of paying the outstanding loan balance owed to Mr. and Mrs. Kilo, Respondent continued to hide his illegal conduct more than 18 months after he had left KCK. Incredibly, Respondent claimed that KCK owed him additional

monies. Notwithstanding the fact that he had already "self executed" the purported 30% agreement and embezzled $169,172.17 from KCK, Respondent prepared Informant's Exhibit 3 and presented it to Mr. Kilo claiming that additional monies were due and owing from the firm under the non-existent agreement. Having already stolen from his firm, Respondent nevertheless sought to steal some more.[13]

Respondent refused to surrender his law license. On May 1, 2000, Respondent and the United States signed a Stipulation of Facts Relative to Sentencing. In order to induce the government to enter into the plea agreement, Respondent agreed, inter alia, "to voluntarily surrender his law licenses immediately at the time of sentencing if the Court accepts this plea bargain." At the subsequent sentencing hearing before Chief Judge Jean C. Hamilton, Respondent's counsel on the federal criminal charges, David Capes, represented to the Court that "Mr. Kazanas is surrendering his law license. That will take place." Informant submits, however, that between the Stipulation of Facts Relative to Sentencing signed on May 1, 2000 and the sentencing hearing on August 4, 2000, Respondent had decided that he would not comply with this requirement and would refuse to surrender his law license. The following facts are relevant in this regard:

- On May 2, 2000, Respondent wrote to the CDC and acknowledged that he had

[13] Respondent's attempt to reduce the outstanding loan balance that he owed to Mr. and Mrs. Kilo by unrelated amounts that he alleged were owed to him by KCK is also consistent with his prior misconduct wherein he bartered with Richard LaRico for personal services in return for the attorney's fees that Mr. LaRico owed to KCK.

begun taking the appropriate steps to fulfill his obligation to maintain the integrity of the legal profession by voluntarily surrender his law license. The CDC sent sample surrender applications to Respondent by letter dated May 10, 2000.

- Respondent began questioning the advisability of agreeing to a voluntary surrender of his law license as he began learning about the ramifications of such a surrender (i.e., that he would have to admit ethical misconduct, that he would likely be disbarred, that he could not apply for reinstatement for five years and that he would have to retake and pass the bar exam). Thus, in a June 22, 2000 telephone conversation with the CDC, Respondent raised the possibility of becoming inactive pursuant to Rule 6.03 instead of voluntarily surrendering under Rule 5.25. On June 23, 2000, the CDC's office wrote to Respondent, advised him of the specific requirements and ramifications of a voluntary surrender and also stated as follows:

  > "Be advised that an election to become inactive under Rule 6.03 is very different from a license surrender under Rule 5.25. In light of the serious allegations pending against you, this office would not agree to forego initiation of disciplinary action should you merely go on inactive status."
  >
  > **Stipulation Exhibit 15**.

- It is undisputed that Respondent failed to surrender his law license on August 4, 2000, the date of sentencing on the federal tax crime.
- The very next day, August 5, 2000, Respondent wrote a letter addressed to "Dear Friend" and sent it to various addressees. In the letter, Respondent acknowledged

that Judge Hamilton had ordered "that I must immediately surrender my license to practice law." **Stipulation Exhibit 6**.

- On August 10, 2000, less than one week after Respondent's sentencing in federal court, Respondent, through counsel, wrote a letter to the CDC office in which he stated as follows:

  > "Therefore, the purpose of this letter is to provide you with the above information that will authorize your office to immediately file an Information directly in the Supreme Court on the basis that Mr. Kazanas has pled guilty of a felony under the laws of the United States of America."

- Just days later, on August 14, 2000, Respondent wrote a letter to the editor of the Missouri Lawyers Weekly. The letter makes no reference to any requirement that Respondent immediately surrender his license. Instead, Respondent stated that "I have begun proceeding toward cooperating with the Missouri Supreme Court regarding the disposition of my license to practice law in the state of Missouri." Stipulation Exhibit 7.

- On October 27, 2000, the United States of America filed a Motion to Revoke Defendant's Sentence in the federal criminal case because of Respondent's violations of the plea bargain, including Respondent's failure to surrender his license. The United States filed a Supplemental Motion to Revoke Sentence and Guilty Plea on November 6, 2000.

- Finally, on January 18, 2001, more than five months after Respondent was sentenced and had agreed to "immediately" surrender his license, and only after he

was under threat of having his sentence revoked in the federal criminal case, Respondent filed his Application for Voluntary Surrender of License Pursuant to Rule 5.25 with the Supreme Court.

A review of the above chronology leads to the inescapable conclusion that Respondent decided between May 1, 2000 (i.e., the date of the Stipulation of Facts Relative to Sentencing) and August 4, 2000 (i.e., the date of sentencing) that he would not comply with his agreement to immediately and voluntarily surrender his license. Instead, Respondent continued to pursue a course of conduct marked by denial of responsibility and allegations of misdeeds by others.[14] Only when forced by the threat of having his sentencing revoked and the prospect of serving jail time for his felony conviction did he finally relent and file his voluntary surrender. Respondent's dishonesty, deceit and moral turpitude are manifest in his actions with regard to his law license.

The testimony of First Assistant United States Attorney Michael Reap is significant. Mr. Reap testified that Respondent had not dealt fairly, reasonably and responsibly with the Office of the United States Attorney. **Tr. I at 294**. Despite the fact

[14] Thus, in the midst of the proceedings regarding Respondent's law license, Respondent filed a lawsuit against KCK and John Kilo wherein he alleged fraud, breach of contract, fraud in the inducement and intentional interference with a business expectancy. Respondent dismissed the Lawsuit with prejudice on January 10, 2001, just eight days prior to surrendering his license.

that his office was "beyond gracious on this plea bargain", Respondent did not deal in good faith with Mr. Reap's office. **Tr. I at 294**. In fact, Mr. Reap stated unequivocally that "if I had to do this over again, I would have tried this case, Mr. Graham, and I think I said that to you. I'm saying that as an officer and a lawyer." Tr. Volume I at 294. Mr. Reap later testified that "[w]e agreed to dismiss those charges [embezzlement] for the plea agreement. Again, I wish I hadn't done that. We wouldn't be here today, and I have strong opinions on this." Tr. I at 299.

Respondent's failure to surrender his law license reflects his refusal to accept responsibility for his actions and is consistent with the pattern of misconduct described above.

The Master correctly found that the source of the income that Respondent failed to report on his income tax return was the theft of money from the KCK law firm. The Master also correctly found that by deluding himself into believing that he had an entitlement to such funds, Respondent established that he should not be allowed to practice law. Respondent's actions clearly violated Rules 4-8.4(c) and 4-8.4(d) and warrant disbarment by this Court.

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT AS RECOMMENDED BY THE SPECIAL MASTER BECAUSE BECAUSE RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) IN THAT RESPONDENT COMMITTED PROFESSIONAL MISCONDUCT INVOLVING DISHONESTY, DECEIT AND MISREPRESENTATION AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

The overwhelming evidence in this case clearly supports a finding that moral turpitude was pervasive in Respondent's conduct. Aside from the federal tax felony conviction, there can be no doubt that Respondent's entire course of conduct in his dealings with the partners and clients of KCK, with the United States and with the Office of Chief Disciplinary Counsel and the Bar was marked by baseness, vileness and depravity in his private and social duties, that it was contrary to the accepted and customary rule of right and duty between man and man and that it was contrary to justice, honesty, modesty and good morals. *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985). In other words, Respondent's conduct epitomized the very definition of moral turpitude and violated Rules 4-8.4(c) and 4-8.4(d) of the Rules of Professional Conduct. The only remaining issue is what type of discipline is warranted from the Court.

As stated above, there are several Missouri cases involving the discipline of attorneys who either failed to file federal income tax returns or failed to pay federal income taxes. See *In re Duncan*, 844 S.W.2d 443 (Mo. banc 1992) (indefinite

suspension ordered where respondent failed to pay federal income taxes); *In re Kueter*, 501 S.W.2d 486 (Mo. banc 1973) (indefinite suspension where respondent failed to file federal tax return); *In re MacLeod*, 479 S.W.2d 443 (Mo. banc 1972) (indefinite suspension where respondent failed to file federal tax return); *In re Foley*, 364 S.W.2d 1 (Mo. banc 1963) (suspension where respondent failed to pay federal income taxes); *In re Canzoneri*, 334 S.W.2d 30 (Mo. banc 1960) (suspension where respondent failed to pay federal income taxes). None of the cases, however, involved underlying misconduct found by the Court to itself involve dishonesty or moral turpitude.

A review of other cases around the country demonstrates that disbarment has been ordered in those cases where courts have examined an attorney's underlying conduct and found it, standing alone and apart from the criminal charges, to involve dishonesty, fraud and moral turpitude. Thus, in a case remarkably similar to the case at bar, the Oregon Supreme Court ordered an attorney disbarred where he was convicted of filing a false federal income tax return and where the court found that he violated his fiduciary duty to his law partners by withholding substantial legal fees that rightfully belonged to the partnership. *In re Pennington*, 348 P.2d 774 (Or. banc 1960).

In *Kaplan v. The State Bar of California*, 804 P.2d 720 (Ca. banc 1991), the Court disbarred an attorney who deposited 24 checks payable to his law firm into his personal bank account. The amount misappropriated totaled $29,000. Even though the attorney confessed to the misappropriation and ultimately made restitution to his law firm, the Court found that the repeated acts of intentional dishonesty and concealment violated his

oath as an attorney and constituted acts of moral turpitude. The Court noted that that attorney's conduct was part of a purposeful design to defraud his partners.

The Missouri Supreme Court has recently relied on the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.) to determine the appropriate sanctions. *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

The following ABA standards are applicable:

3.0 Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

(a) the duty involved;

(b) the lawyer's mental state;

(c) the actual or potential injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating circumstances.

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit or misrepresentation:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

9.2 Aggravation

9.22 Factors which may be considered in aggravation. Aggravating factors include:

. . . . . .

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

. . . . . .

(g) refusal to acknowledge wrongful nature of conduct.

By the well-settled law of the Missouri Supreme Court, all tax offenses are crimes of moral turpitude involving willfulness. *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1993). Even though the tax offense in *Duncan* was a misdemeanor, the Court nonetheless concluded that it was a crime of moral turpitude. Respondent's crime in the case at bar is eminently more serious, involving a felony where the taxes evaded were

based on income derived from theft and embezzlement. Respondent pled guilty to willfully subscribing to a tax return he did not believe to be true and correct in material respects. Respondent admitted to a "knowing failure to report substantial income."

Aside from the serious ramifications of pleading guilty to the felony of federal tax evasion, Respondent's course of conduct in this matter was rife with dishonesty, fraud, deceit and moral turpitude. He lied, cheated and stole from his law partners at KCK with whom he shared a fiduciary duty. He lied to KCK clients in order to collect attorney's fees properly payable to the law firm. He lied to the United States government regarding his intent to voluntarily surrender his law license. By application of Rule 5.11 of the ABA Standards, Respondent should be disbarred.

Aggravating circumstances are present in this case. Respondent has refused to acknowledge the wrongful nature of his conduct. He refused at trial to acknowledge the scope of his thefts from the KCK firm or even to admit that he had embezzled funds to which he was not entitled. Instead, Respondent characterized his conduct as "self enforcement" of a non-existent agreement. Respondent publicly demonstrated his refusal to acknowledge the wrongful nature of his conduct by writing letters in which he blamed his problems with the government on everyone but himself and downplaying the felony to which he stated he "conditionally" pled guilty as only "relat[ing] to the manner in which I calculated my portion of the fees that were collected from my clients." Such unrepentant statements constitute an aggravating circumstance warranting Respondent's disbarment.

CONCLUSION

Respondent committed professional misconduct involving dishonesty and moral turpitude by pleading guilty to willfully filing a materially false federal tax return and by engaging in a pattern and course of misconduct that was marked by baseness, vileness and depravity in his private and social duties, that was contrary to the accepted and customary rule of right and duty between man and man and that was contrary to justice, honesty, modesty and good morals. His misconduct extended to his refusal to surrender his law license as agreed and stipulated to in his plea bargain with the United States. His conduct violated Rules 4-8.4(c) and 4-8.4(d) of the Rules of Professional Conduct. The significant presence of cognitive awareness in his misconduct, coupled with his refusal to take responsibility for, or even acknowledge, the nature and extent of his wrongdoing, require disbarment.

Respectfully submitted,

OFFICE OF CHIEF DISCIPLINARY COUNSEL

MARIDEE FARNQUIST EDWARDS
Chief Disciplinary Counsel

By: _____

Alan D. Pratzel, #29141
634 North Grand, Suite 10A
St. Louis, MO 63103
(314) 533-0196
Fax: (314) 533-3345

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2002, two copies of Informant's Brief and a disk containing the Brief in Word format have been sent via First Class United States Mail, postage prepaid, to:

Maurice B. Graham, Esq.
Attorney for Respondent
701 Market Street, Suite 800
St. Louis, MO 63101

_____
Alan D. Pratzel

CERTIFICATION: SPECIAL RULE NO. 1(c)

I hereby certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Special Rule No. 1(b);

3. Contains 11,495 words, according to Microsoft Word 2000, which is the word processing system used to prepare this Brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus-free.

_____